

STATE OF MICHIGAN
MACOMB COUNTY CIRCUIT COURT

STEVE CONRAD,

Plaintiff,

vs.

Case No. 2005-4807-CZ

COMPREHENSIVE COLLECTION SERVICES,
MEDICAL PAYMENT DATA a.k.a. ARGENT,
EMC MORTGAGE, CORNERSTONE COMMUNITY
FEDERAL CREDIT UNION, FIRST PREMIER BANK,
CAPITAL ONE BANK, EQUITY ONE, L.J. ROSS &
ASSOCIATES, OPTION ONE MORTGAGE,

Defendants.

OPINION AND ORDER

Plaintiff has filed a motion for entry of default judgment as to all defendants.

Plaintiff, in propria persona, filed this action on November 30, 2005. Plaintiff avers that defendants have reported erroneous information regarding his credit history to Experion, Transunion, Equifax, and other credit reporting agencies. Plaintiff therefore requests that this Court order defendants "to remove said derogatory information from [his] credit file[s]." In his complaint, plaintiff acknowledges that the amount in controversy in this matter is less than \$25,000. On March 16, 2006, defaults were entered as to each of the defendants in this matter. On March 27, 2006, plaintiff filed the present motion for entry of default judgment.

As a preliminary matter, the Court must address the jurisdictional issue raised by plaintiff's acknowledgment that the amount in controversy in this matter is less than \$25,000. MCL 600.8301(1) provides that "[t]he district court has exclusive jurisdiction in civil actions when the amount in controversy does not exceed \$25,000.00." However, district courts generally



do not have jurisdiction in actions for injunctions or other historically equitable actions. MCL 600.8315. The Court believes that the relief plaintiff is requesting is essentially injunctive in nature, and thus finds that this Court is not precluded from exercising jurisdiction over this matter because of the amount in controversy.

In support of his motion for entry of default judgment, plaintiff claims that all defendants were served with the complaint. Plaintiff avers that none of the defendants have filed an appearance or a responsive pleading to the complaint.

Considering the fact that none of the nine defendants in this matter have filed an appearance or an answer, the Court has examined the affidavits of service in this matter in order to determine whether service was properly effectuated. A court's "authority to enter a default or default judgment against a party must fall within the parameters of the authority conferred under the court rules." *Kornack v Auto Club Ins Ass'n*, 211 Mich App 416, 420; 536 NW2d 553 (1995). Failure to properly serve a defendant with a summons and complaint deprives the trial court of personal jurisdiction, and the court is left without legal authority to render a judgment. *Alycekay Co v Hasko Construction Co, Inc*, 180 Mich App 502, 505-506; 448 NW2d 43 (1989); see also *Dogan v Michigan Basic Prop Ins Ass'n*, 130 Mich App 313, 320; 343 NW2d 542 (1983).

The court rules enumerate various methods of effectuating service of process. Plaintiff does not specify the legal status of the defendants in this matter, but it appears that they are various business entities. Service may be made on a partnership by "serving a summons and a copy of the complaint on any general partner;" or by serving the same "on the person in charge of a partnership office or business establishment and sending a copy of the complaint by registered mail, addressed to a general partner at his or her usual residence or last known

address.” MCR 2.105(C). Service on a private corporation may be made by “serving a summons and a copy of the complaint on an officer or resident agent;” serving the same on a “director, trustee, or person in charge of an office or business establishment of the corporation and sending a summons and a copy of the complaint by registered mail, addressed to the principal office of the corporation;” by “serving a summons and a copy of the complaint on the last presiding officer, president, cashier, secretary, or treasurer of a corporation that has ceased to do business” for one of a number of reasons; or by “sending a summons and a copy of the complaint by registered mail to the corporation or an appropriate corporation officer and to the Michigan Corporation and Securities Bureau” under certain circumstances. MCR 2.105(D). “On a showing that service of process cannot reasonably be made as provided by this rule,” a court may order service “in any other manner reasonably calculated to give the defendant actual notice of the proceedings and an opportunity to be heard.” MCR 2.105(I)(1).

When service of process is effectuated by a private process server, as appears to have been the case in this present matter, proof of service must be made by “an affidavit stating the facts of service, including the manner, time, date, and place of service, and indicating the process server’s official capacity, if any.” MCR 2.104(A)(3). Having carefully reviewed these affidavits of service, the Court believes that the manner of service which the affidavits describe was facially defective as to all defendants except Equity One. The affidavits of service indicate that a summons and a copy of the complaint were mailed to *single* addresses ostensibly associated with each of the defendants except Equity One, which was allegedly served personally. However, the court rules do not provide for service via registered mail alone. See generally MCR 2.105 and MCR 2.106. Since the affidavits show that service was defective as to all defendants other than Equity One, this Court does not have jurisdiction over these defendants, and plaintiff’s motion

for a default judgment must be denied. See, e.g., *Alycekay Co, supra*. Further, since these defendants have not been served with process as provided in the court rules, and since the summons in this matter expired on March 1, 2006, plaintiff's cause of action against these defendants must be dismissed pursuant to MCR 2.102(E).

As noted above, careful review of the affidavits of service filed in this matter reveals that personal service was allegedly effectuated as to defendant Equity One alone. Assuming the individual who allegedly received process on behalf of Equity One was an authorized recipient of process under MCR 2.105, this service would be adequate. However, the affidavit of service pertaining to this defendant does not indicate the process recipient's identity or relationship to Equity One. While this does not necessarily indicate a deficiency in the process, the Court believes that it would nevertheless be useful to have some clarification as to the identity of the recipient. Upon receiving such clarification, the Court will be able to determine whether the recipient was authorized to receive process on behalf of Equity One, and then determine whether entry of a default judgment is warranted as to this defendant.

For the reasons set forth above, plaintiff's motion for default judgment as to all defendants except Equity One is DENIED, and plaintiff's complaint as to all defendants except Equity One is DISMISSED without prejudice. Plaintiff's motion for default judgment as to defendant Equity One is ORDERED held in abeyance, and plaintiff is ORDERED to provide the Court with an affidavit within 30 days from the date of this opinion, indicating the identity and relationship to Equity One of the recipient of process on behalf of Equity One. Pursuant to MCR 2.602(A)(3), this Opinion and Order does not resolve the last pending claim or close the case.

IT IS SO ORDERED BY **DIANE M. DRUZINSKI**
CIRCUIT JUDGE

MAY 1 2006

A TRUE COPY
CARMELLA SABAUGH, COUNTY CLERK
BY: [Signature] Court Clerk

Diane M. Druzinski, Circuit Court Judge

Date: MAY 11 2006

DMD/aac

cc: Plaintiff, In Pro Per
Comprehensive Collections Services
Medical Payment Date a/k/a Argent
EMC Mortgage
Cornerstone Community Federal Credit Union
First Premier Bank
Capital One Bank
Equity One
L.J. Ross & Associates
Option One Mortgage